

Graham Ex. C

<p>1 UNITED STATES DISTRICT COURT</p> <p>2 SOUTHERN DISTRICT OF NEW YORK</p> <p>3</p> <p>4 FEDERAL TRADE COMMISSION and)</p> <p>5 THE PEOPLE OF THE STATE OF)</p> <p>6 NEW YORK, by LETITIA JAMES,) Matter No.</p> <p>7 Attorney General of the State) 1:17-cv-00124-LLS</p> <p>8 of New York,) CONFIDENTIAL</p> <p>9 Plaintiffs,) ATTORNEYS' EYES</p> <p>10 v.) ONLY</p> <p>11 QUINCY BIOSCIENCE HOLDING)</p> <p>12 COMPANY, et al.,)</p> <p>13 Defendants.)</p> <p>14 -----)</p> <p>15</p> <p>16 Friday, August 21, 2020</p> <p>17 Via Zoom</p> <p>18</p> <p>19 The above-entitled matter came on for the</p> <p>20 deposition of MARK YANCEY UNDERWOOD, in his individual</p> <p>21 capacity, pursuant to notice, at 8:33 a.m., Central</p> <p>22 time; 9:33 a.m., Eastern time.</p> <p>23</p> <p>24</p> <p>25</p>	<p>3</p> <p>1 ON BEHALF OF DEFENDANTS:</p> <p>2 GEOFFREY W. CASTELLO, ESQ.</p> <p>3 JACLYN M. METZINGER, ESQ.</p> <p>4 GLENN T. GRAHAM, ESQ.</p> <p>5 Kelley Drye & Warren</p> <p>6 One Jefferson Road</p> <p>7 Second Floor</p> <p>8 Parsippany, New Jersey 07054</p> <p>9 (973) 503-5922</p> <p>10 gcastello@kelleydrye.com</p> <p>11</p> <p>12</p> <p>13 ON BEHALF OF THE WITNESS:</p> <p>14 MICHAEL B. DeLEEuw, ESQ.</p> <p>15 TAMAR WISE, ESQ.</p> <p>16 Cozen O'Connor</p> <p>17 45 Broadway</p> <p>18 16th Floor</p> <p>19 New York, New York 10006</p> <p>20 (212) 908-1331</p> <p>21 mdeleeuw@cozen.com</p> <p>22</p> <p>23</p> <p>24 ALSO PRESENT:</p> <p>25 William Ducklow, FTC</p>																																												
<p>2</p> <p>1 APPEARANCES:</p> <p>2</p> <p>3 ON BEHALF OF THE FEDERAL TRADE COMMISSION:</p> <p>4 ANNETTE SOBERATS, ESQ.</p> <p>5 MICHELLE RUSK, ESQ.</p> <p>6 EDWARD GLENNON, ESQ.</p> <p>7 Federal Trade Commission</p> <p>8 600 Pennsylvania Avenue, N.W.</p> <p>9 Washington, DC 20580</p> <p>10 (202) 326-2921</p> <p>11 asoberats@ftc.gov</p> <p>12</p> <p>13</p> <p>14 ON BEHALF OF THE STATE OF NEW YORK:</p> <p>15 KATE MATUSCHAK, ESQ.</p> <p>16 Assistant Attorney General for the</p> <p>17 State of New York</p> <p>18 Consumer Frauds and Protection Bureau</p> <p>19 120 Broadway</p> <p>20 New York, New York 10271</p> <p>21 (212) 416-6189</p> <p>22 kate.matuschak@ag.ny.gov</p> <p>23</p> <p>24</p> <p>25</p>	<p>4</p> <p>1 FEDERAL TRADE COMMISSION</p> <p>2 I N D E X</p> <p>3</p> <table border="0"> <tr> <td>4 WITNESS:</td> <td>EXAMINATION:</td> </tr> <tr> <td>5 MARK YANCY UNDERWOOD</td> <td></td> </tr> <tr> <td>6 BY MS. SOBERATS:</td> <td>9</td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8</td> <td></td> </tr> <tr> <td>9 EXHIBITS DESCRIPTION FOR ID</td> <td></td> </tr> <tr> <td>10 Number MU-26 Underwood Notice of Deposition</td> <td>13</td> </tr> <tr> <td>11</td> <td></td> </tr> <tr> <td>12 Number MU-27 Underwood Biographical Sketch</td> <td>14</td> </tr> <tr> <td>13 Number MU-28 Quincy Bioscience Holding Company's Answers to the Federal Trade Commission's Civil Investigative Demand Interrogatories</td> <td>45</td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15 Number MU-29 8/24/16 Richards Group Correspondence</td> <td>47</td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17 Number MU-30 2/25/16 Underwood/Olson/Seney Email Exchange</td> <td>54</td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19 Number MU-31 Alzheimer's Conference Announcement</td> <td>99</td> </tr> <tr> <td>20 Number MU-32 8/29/11 Olson/Benson Email Exchange</td> <td>101</td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22 Number MU-33 3/7/12 Olson/Benson Email Exchange</td> <td>104</td> </tr> <tr> <td>23</td> <td></td> </tr> <tr> <td>24 Number MU-34 Advances Madison Memory Study Publication</td> <td>110</td> </tr> <tr> <td>25</td> <td></td> </tr> </table>	4 WITNESS:	EXAMINATION:	5 MARK YANCY UNDERWOOD		6 BY MS. SOBERATS:	9	7		8		9 EXHIBITS DESCRIPTION FOR ID		10 Number MU-26 Underwood Notice of Deposition	13	11		12 Number MU-27 Underwood Biographical Sketch	14	13 Number MU-28 Quincy Bioscience Holding Company's Answers to the Federal Trade Commission's Civil Investigative Demand Interrogatories	45	14		15 Number MU-29 8/24/16 Richards Group Correspondence	47	16		17 Number MU-30 2/25/16 Underwood/Olson/Seney Email Exchange	54	18		19 Number MU-31 Alzheimer's Conference Announcement	99	20 Number MU-32 8/29/11 Olson/Benson Email Exchange	101	21		22 Number MU-33 3/7/12 Olson/Benson Email Exchange	104	23		24 Number MU-34 Advances Madison Memory Study Publication	110	25	
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<p style="text-align: right;">5</p> <p>1 EXHIBITS DESCRIPTION FOR ID</p> <p>2 Number MU-35 12/18/15 Underwood/Beaman 118</p> <p>3 Email Re: Prevagen</p> <p>4 Scientific Summary</p> <p>4 Number MU-36 12/15/18 Underwood/Beaman 142</p> <p>5 Email Re: Systemic Review</p> <p>6 of Prevagen Science</p> <p>6 Number MU-37 Underwood/Prendamano Email 145</p> <p>7 Number MU-38 11/1/10 Underwood/Klein 150</p> <p>8 Email Exchange</p> <p>8 Number MU-39 3/19/14 Adams/Moran Email 162</p> <p>9 Number MU-40 5/22/15 Underwood/Moran 168</p> <p>10 Email Exchange</p> <p>11 Number MU-41 Quincy GRAS Submission 175</p> <p>12 Number MU-42 10/16/12 FDA Warning Letter 181</p> <p>13 Number MU-43 7/5/11 Beaman/Dvorak Email 191</p> <p>14 Number MU-44 Underwood/Beaman Email Re: 195</p> <p>15 Congressman Burgess</p> <p>16 Number MU-45 11/23/15 Warren/Underwood 199</p> <p>17 Email Exchange</p> <p>17 Number MU-46 Prevagen Professional 201</p> <p>18 Markup</p> <p>18 Number MU-47 7/25/14 203</p> <p>19 Underwood/Olson/Lerner</p> <p>20 Email Exchange</p> <p>21 Number MU-48 Olson/Underwood/Lerner 207</p> <p>22 Email Re: Madison Memory</p> <p>23 Study VL 9-30-15</p> <p>24 OTHER EXHIBITS REFERENCED PAGE</p> <p>24 MU-3 64</p> <p>25</p>	<p style="text-align: right;">7</p> <p>1 Kelley Drye & Warren, LLP. I have with me my</p> <p>2 colleagues, Jaclyn Metzinger and Glenn Graham on behalf</p> <p>3 of the corporate defendants. Also appearing today on</p> <p>4 behalf of Defendant Mark Underwood, Michael deLeeuw and</p> <p>5 Tamar Wise, Cozen O'Connor, LLP.</p> <p>6 VIDEO TECHNICIAN: Would the court reporter</p> <p>7 please swear in the witness.</p> <p>8 Whereupon--</p> <p>9 MARK YANCEY UNDERWOOD</p> <p>10 a witness, called for examination, having been first</p> <p>11 duly sworn, was examined and testified as follows:</p> <p>12 MS. SOBERATS: Mr. Castello, before we get</p> <p>13 started, I think you're muted.</p> <p>14 MR. CASTELLO: I'm not muted, I'm having a</p> <p>15 problem with my headset here. Go ahead, Annette.</p> <p>16 MS. SOBERATS: I thought before we would get</p> <p>17 started, we would discuss the agreement that we reached</p> <p>18 yesterday. Yesterday the parties reached an agreement</p> <p>19 on the duration of Mr. Underwood's 30(b)(6) deposition</p> <p>20 and his deposition in his individual capacity. We</p> <p>21 agreed that for the portion of the 30(b)(6), the</p> <p>22 Plaintiffs would be entitled to five hours of testimony,</p> <p>23 and for the individual deposition, Plaintiffs would have</p> <p>24 seven hours of testimony. One of the terms of that</p> <p>25 agreement was, based on my understanding, that Mr.</p>
<p style="text-align: right;">6</p> <p>1 PROCEEDINGS</p> <p>2 - - - - -</p> <p>3 VIDEO TECHNICIAN: Here begins disk 1 in the</p> <p>4 video deposition of Mark Underwood as an individual,</p> <p>5 taken in the matter of Federal Trade Commission, et al.</p> <p>6 v. Quincy Bioscience Holding Company, Inc., et al. in</p> <p>7 the United States District Court, Southern District of</p> <p>8 New York, Case Number 1:17-cv-00124-LLS.</p> <p>9 Today's date is August 21st, 2020, and the time</p> <p>10 on the video monitor is 8:34 a.m. Central Daylight time.</p> <p>11 This deposition is being held remotely via</p> <p>12 videoconference. The court reporter is Sally Quade on</p> <p>13 behalf of For The Record. The video camera operator is</p> <p>14 Isaac Hoerner on behalf of For The Record.</p> <p>15 Will counsel please introduce themselves and</p> <p>16 state whom they represent, beginning with the party</p> <p>17 noticing the deposition.</p> <p>18 MS. SOBERATS: Good morning. Appearing for the</p> <p>19 Federal Trade Commission are attorneys Annette Soberats,</p> <p>20 Michelle Rusk and Edward Glennon, and investigator Will</p> <p>21 Ducklow.</p> <p>22 MS. MATUSCHAK: And this is Kate Matuschak on</p> <p>23 behalf of the office of the New York State Attorney</p> <p>24 General.</p> <p>25 MR. CASTELLO: Good morning. Geoffrey Castello,</p>	<p style="text-align: right;">8</p> <p>1 Underwood's testimony as a 30(b)(6) witness would be</p> <p>2 adopted into his testimony as an individual -- as an</p> <p>3 individual witness.</p> <p>4 I just wanted to place that stipulation on the</p> <p>5 record at the beginning and give you an opportunity to</p> <p>6 add anything that you would like to add.</p> <p>7 MR. CASTELLO: Sure. At this point, I, of</p> <p>8 course, we don't know what questions you intend to ask</p> <p>9 today, I would ask, respectfully, that you not cover</p> <p>10 ground that was explicitly covered yesterday. In that</p> <p>11 case, Mr. Underwood would adopt his testimony from</p> <p>12 yesterday in his role as a 30(b)(6) designee, as his</p> <p>13 role today as an individual witness.</p> <p>14 MS. SOBERATS: Okay, and I --</p> <p>15 MR. CASTELLO: And just to make sure that</p> <p>16 Mr. DeLeeuw agrees with that.</p> <p>17 MR. DELEEUEW: Absolutely.</p> <p>18 MS. SOBERATS: And I will just clarify that I</p> <p>19 did state yesterday that nothing in our agreement barred</p> <p>20 Plaintiffs from covering the same topics, so long as</p> <p>21 they were asking new questions.</p> <p>22 MR. CASTELLO: I agree. I do, Annette, have to</p> <p>23 take this on a question-by-question basis, and I'll let</p> <p>24 Mr. DeLeeuw speak for himself, but I certainly intend to</p> <p>25 stick with the spirit of our agreement in practical</p>

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1 MR. CASTELLO: I'm going to caution the witness
2 that if in order to answer that question he be required
3 to divulge any communication that the company had with
4 counsel, that he not answer the question.

5 THE WITNESS: Yeah, I'll have to heed Geoff's
6 counsel.

7 BY MS. SOBERATS:
8 [REDACTED]

21 **Q. And does it refer to Quincy's interpretations of**
22 **the results for the Groton Maze Recall task?**

23 MR. CASTELLO: I'm going to caution the witness
24 that if in order to answer that question he be required
25 to divulge any information that the company had with

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1 counsel, that he not answer that question.

2 THE WITNESS: I'm going to have to follow
3 Geoff's counsel.

4 BY MS. SOBERATS:
5 [REDACTED]

8 MR. CASTELLO: Is that question independent of
9 communications that the company had with counsel?

10 MS. SOBERATS: Yes.

11 MR. CASTELLO: So to the extent that the witness
12 can answer independent of any independent communications
13 that the company may have had with counsel on that
14 subject, he can answer.
15 [REDACTED]

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1 BY MS. SOBERATS:

2 **Q. And did you approve edits to Prevagen's**
3 **packaging?**

4 A. I would be one of the people that approved edits
5 to Prevagen's packaging, but not the sole individual.

6 **Q. Who else would approve edits to Prevagen's**
7 **packaging?**

8 A. Internally, people that are part of our
9 marketing and advertising team, as well as counsel.

10 **Q. Does Mr. Beaman approve edits to Prevagen's**
11 **packaging?**

12 A. He does not.

13 **Q. Is he consulted before substantive changes to**
14 **Prevagen's packaging?**

15 A. He is not.

16 **Q. Let's talk about the Brain Health Guide for a**
17 **few moments. Have there been five editions to the Brain**
18 **Health Guide?**

19 A. I don't know exactly.

20 **Q. Okay. Have you authored all of the editions of**
21 **the Brain Health Guide?**

22 A. I have not.

23 **Q. Who else has authored them?**

24 A. We have different content contributors, both
25 inside the company and outside the company.

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1 A. Yeah.

2 **Q. And I'd like you to turn to page 6, and just for**
 3 **the record, these are Defendant Quincy Bioscience**
 4 **Holding Company, Inc.'s Responses -- Answers to the**
 5 **FTC's Civil Investigative Demand Interrogatories. If**
 6 **you go to page 6, Mr. Underwood, I'd like you to look at**
 7 **interrogatory 4. The answer lists you, Mark Underwood,**
 8 **as president and it states that you're involved in**
 9 **translation of scientific data into marketing language.**
 10 **Can you explain to me what that means?**

11 A. Sure. You've read a lot of our research, and
 12 you probably would also agree and recognize that some of
 13 the topics that we research don't roll off the tongue
 14 real clearly if you don't have a background in
 15 neurosciences. And so we try to make that messaging
 16 connect with people that don't have Ph.D.s. So in a
 17 sense we need to make sure that the things we learn in
 18 the lab are translated into appropriate consumer
 19 language.

20 So part of that is for just clear communication,
 21 and part of that is probably more importantly to make
 22 sure that we don't overextend or overpromise the type of
 23 claim that we're making from research because, as you
 24 know, there are different agencies that are in charge of
 25 such, and we're never looking to be on the bad side of

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1 them. So if data comes out of a lab that maybe shows
 2 some sort of like -- I'll call it a disease-like
 3 response, or dizzy -- treatment like, you know, status,
 4 even though that's scientifically valid, we have to make
 5 sure that we don't convey that to a consumer because it
 6 would become an issue with perhaps the Food and Drug
 7 Administration.

8 So part of it is, again, you knew, clear
 9 communication to the consumer, and part of it is making
 10 sure that we know our audience so that we don't break a
 11 rule when it comes to sharing what we might have
 12 learned, we don't necessarily have the right to share
 13 that fully with a consumer audience because of the
 14 regulations we fall under.

15 **Q. And you're involved in this process that you've**
 16 **just described?**

17 A. I am, in conjunction with counsel. But yes.

18 **Q. Is Mr. Beaman involved in this process?**

19 A. No, he is not. To add, our entire team is
 20 involved in this process in terms of our marketing and
 21 advertising personnel, and we continue to learn and we
 22 continue to take those lessons that we learn along the
 23 way and implement them into -- into our collective
 24 experience so that we do it better and better,
 25 hopefully, as time goes by.

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1 **Q. And, Mr. Underwood, you testified earlier that**
 2 **you have communications multiple times a week with Mr.**
 3 **Underwood -- Mr. Beaman, pardon. And that you keep him**
 4 **informed on research. Why do you keep Mr. Beaman**
 5 **informed on research?**

6 A. Well, it does affect some of the bigger picture
 7 items in our company, and so I mean, he's interested in
 8 how well the company is doing. He's interested in
 9 things like, you know, what the future might hold in
 10 terms of what we're looking at developing and the path
 11 we're going for the future.

12 So, yeah, I do inform them of what's going on
 13 with research, although we do talk several times a week,
 14 we rarely talk about research because we don't have
 15 research updates several times a week. We have
 16 operational things, the basic running of the business
 17 that, you know, we might discuss, you know, one topic or
 18 the next.

19 **Q. And has he requested to have these regular**
 20 **communications with you?**

21 A. No.

22 MR. CASTELLO: Objection.

23 THE WITNESS: And by regular, they're not --
 24 they're not programmed, they're not scheduled. They're
 25 on occasion. I haven't talked with Mike on the phone

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1 for a couple weeks, actually. At this current date.

2 BY MS. SOBERATS:

3 **Q. Has Mr. Beaman requested to have communications**
 4 **with you multiple times a week?**

5 A. No.

6 MR. DELEEUEW: Object to the form.

7 BY MS. SOBERATS:

8 **Q. And do you feel that you need to keep Mr. Beaman**
 9 **updated on developments at Quincy?**

10 MR. CASTELLO: Objection.

11 MR. DELEEUEW: Object to the form.

12 THE WITNESS: No, I don't.

13 BY MS. SOBERATS:

14 **Q. I want to talk specifically about the Madison**
 15 **Memory Study. What was your role in that study?**

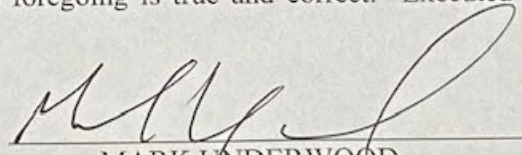
16 A. Well, similar to what we talked about for my
 17 role in other -- you know, in clinical studies and
 18 preclinical studies. The same -- the same type of
 19 thing. Helping to organize the staff that conducts the
 20 research, looking at the overall goals or aims of the
 21 study. You know, I guess participating in the concepts
 22 of what we wanted the protocol or the study goals to be,
 23 and then letting our staff execute on those goals.

24 **Q. Did you review the recruitment ads for the**
 25 **Madison Memory Study?**

I, Mark Underwood, hereby certify that I have read and examined the transcript of the deposition of Mark Underwood, which occurred on August 21, 2020, and hereby make the following corrections to the transcript of my deposition:

PAGE	LINE(S)	CORRECTION	REASON
18	25	Replace "syllabus" with "similar"	Transcription error
43	22	Replace "established" with "establish"	Transcription error
82	18	Replace "Milwaukee Journal" with "Milwaukee Business Journal"	Transcription error
153	10	Replace "acquorin" with "aequorin"	Typo

I declare under penalty of perjury that the foregoing is true and correct. Executed at Madison, Wisconsin on September 21, 2020.


MARK UNDERWOOD